CIVIL WRIT JURISDICTION CASE No.7462 OF 1990

In the matter of an application under Articles 226 and 227 of the Constitution of India

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1.(a) SUDARSHAN JHA S/O RAM PRASAD JHA OF VILLG- KUHRA (CHAKLA RATANPURA, PO. KAHRA, PS. SAHARSA, DISTT. SAHRSAS---- -------PETITIONER

VERSUS

1. THE STATE OF BIHAR THROUGH SECRETARY LAND REFORMS AND REVENUE, GOVERNMENT OF BIHAR
2. THE ADDL. COLLECTOR, SAHARSA
3. LAND REFORMS DEPTY COLLECTOR, SAHARSA
4. SOBHA KANT JHA S/O LATE DAMODAR JHA
5. MANOJ KUMAR JHA
6. GHANSHYAM JHA
7. RAJ KUMAR JHA
8. SANTOSH KUMAR JAH, ALL S/O LATE TIRPIT JHA U/G OF HIS MOTHER ASHA DEVI
9. ASHA DEVI WIFE OF LATE TIRPIT JHA
10. RADHAKANT JHA
11. ARJUN JHA
12. AMRENDRA JHA, ALL S/O LATE HARINANAN JHA
13. SATYANARAIN JHA
14. BIHAY NARAIN JHA
15. SHYAM NARAIN JHA S/O HARIBALLABH JHA
16. PARMESHWAR JHA S/O LATE BHUBNESHSAR JHA
17. JAGESHWAR JHA S/O LATE BANSH NARAIN JHA
18. GAGADHAR JHA S/O LATE KAMLAKANT JHA
19. SHANKAR JHA
20. JATA SHANKAR JHA BOTH S/O LATE THAKAN JHA
21. MAHESHWAR JHA S/O LATE SUBODH NARAIN JHA
22. PURANDHAR JHA S/O LATE SUBODH NARAIN JHA
23. PRATAP GOPE S/O LATE CHHATHU GOPE
24. MOST. MUSAHARNIA W/O LATE RAMADHIN GOPE
25. PREM GOPE
26. NARAIN GOPE
27. LAKHAN GOPE
28. LAXMI GOPE, ALL S/O LATE SUNDAR GOPE
29. MADAN TANTI S/O LATE MOUJI TANTI
30. THAKAY DAS
31. BANKAY DAS BOTH S/O LATE BHAYLAL TANTI
32. LAXAMESHWAR JHA S/O LATE MAKSUDAN JHA
33. RAM NARAIN JHA S/O LATE LUXMI NARAIN JHA
34. BUCHI DAY W/O LATE BUDHI NATH JHA
35. HIRA DAY W/O SAHDEO JHA
36. PITAMBER JHA S/O LATE ANANDI JHA
37. RAMCHANDRA JHA
38. SAROBAR JHA
39. JAGDISH JHA S/O LATE NILAMBER JHA
40. TRIVENI DEVI W/O LATE NILAMBER JHA
41. BACHAN JHA S/O LATE DIGAMBER JHA
42. JAGESHWAR SAH
43. NATHUNI SHA S/O LATE BIJALI SAH
44. MASOMAT KAILI W/O LATE KAILU SAH
45. RAMESHWAR JHA S/O LATE CHITRADHAR JHA
46. DORIK TANTI S/O LATE SANDEO TANTI, ALL R/O VILLAGE & PO- KAHRA, PS. & DISTT.- SAHARSA
47. BHADAI SAH S/O LATE GHURAN SAH
48. PULKIT SAH S/O LATE NEMANI SAH
49. RAMCHANDRA SAH S/O LATE PUHUP SAH

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50. UPENDRA SAH S/O LATE PUHUP SAH
51. UMESH SAH S/O PUHUP SAH
52. GANESH SAH S/O LATE BINO SAH, ALL R/O VILLAGE- NARIYAR TOLA BAINGAHA PS,. & DISTT. SAHARSA
53. INDRADEO PRASAD SINGH S/O LATE NAGESHWAR PRASAD SINGH OF VILLAGE AND PO –RAHUWA MANI, PS. SAHARSA, DISTT.- SAHARSA---------- RESPONDENTS.

FOR THE PETITIONER;- MR. SHASHI BHUSHAN SINGH,ADVOCATE
FOR THE RESPONDENTS;-

P R E S E N T
HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI
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A.K.Tripathi,J Petitioner wants setting aside the order dated 11.10.1990 which is an order in appeal passed by the court of Additional Collector, Sahsarsa.

Petitioner was claiming restoration of piece and parcel of land in question under the provision of Koshi Area (Restoration of Land to Raiyats) Act, 1951. No doubt the L.R.D.C. held in favour of the petitioner but on appeal the order has been set aside and that is the cause of the grievance why the present writ application has come to be filed.

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On perusal of the order contained in annexure-3 there is categorical finding recorded that there is evidence to show that the petitioner did not leave the village till 1950 and therefore he has not been able to claim abandonment based on which the relief under section 3 of the Koshi Area could be provided. Section 3 lays down the condition under which such land could be restored to raiyats. Section 3 also lays down the period in question which is 1st day of January, 1939 till 31st day of December, 1950.

If this vital aspect of the matter has not been

noticed by the DCLR but has been taken note of by the appellate authority then merely because the order was in favour of the petitioner the appellate order cannot be inferred with. The relief to the petitioner has to be granted within section 3 of Koshi Act. Since the petitioner has failed to prove this fact of abandonment before the period in question no case is made out for interference.

This writ application is dismissed.

(Ajay Kumar Tripathi, J.)

Patna High Court, Patna
Dated the 15th December, 2008
NAFR (RPS)

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